



Staff Report

TO CONSIDER A VARIANCE FOR A REAR YARD DECK EXTENSION AT 1814 OAK KNOLL DRIVE

Honorable Mayor and Council Members:

Summary

On May 10, 2005, by a 4-0-1 vote (1 recused), the City Council adopted Resolution 9663 denying a Variance to allow a deck extension to encroach four feet into the required fifteen foot rear yard setback at 1814 Oak Knoll Drive. Since that time, the applicant, Steven Eckert, has been working with the City Attorney's office regarding a potential settlement agreement in the matter. As a result of such discussions, a revised deck extension proposal has been submitted to the City. The proposed deck extension would encroach three feet into the rear yard for the property; the total new deck area added would be 45 square feet (3 ft. X 15 ft.) – See Attachments.

Based on a review of the revised submittal, staff recommends that the City Council approve the Setback Variance for the property.

Site History/Project Description

The subject lot was originally established as part of the Belmont Country Club Subdivision No.1 in 1924. The property was resubdivided in the mid 1970's and the original dwelling was constructed in 1978. The City Council approved a Floor Area Exception to construct a 478 square foot addition for the lowest level of the dwelling which included a family room, bathroom, and study in 1991. In 1993, the applicant received approval of an administrative floor area exception to construct a 98 square foot addition within the middle level of the dwelling below the garage and underneath the driveway.

The property has an existing deck which extends six feet off the upper rear level of the residence, leaving the required minimum setback of fifteen feet. The existing deck extends the entire 40-foot width of the residence for a total of approximately 240 square feet. The previous four-foot extension proposal (4 ft. X 30 ft.) would have added 120 square feet of deck area (360 square feet total for this deck) for the dwelling. As discussed earlier, the revised proposal includes a three-foot deep by 15-foot long extension that would add 45 square feet of deck area (285 square feet total for this deck) for the dwelling.

Site Conditions

The subject residence is located in a neighborhood of single and two-story residences of mixed architectural styles. Single family dwellings surround the site to the west, east, north, and south. The residence is situated on a 3,535 square foot down slope lot with an average slope of approximately 30%. The front entrance to the dwelling is accessible by a set of stairs from the street level. The rear yard is accessible by a set of exterior steps on the right side of the residence, and from the interior of the house. A small level patio is located within the rear yard; the edge of the patio is framed with landscaping and trees.

Project Data

Criteria	Project Dimensions (existing)	Proposed	Required or Max. Allowed
Lot Size	3,535 square feet	No Change	6,000 square feet
Slope	30%	No Change	NA
Dwelling square footage	2,619 square feet (200 square feet of covered deck no longer counted as floor area)	No Change	2,619 Square feet - Approved FAR Exceptions – 1991, 1993
Deck Square Footage	240 square feet	285 square feet	NA
Setbacks:			
Front	17'	No Change	15-30'*
Side (right)	5'	No Change	6'
Side (left)	5'	No Change	6'
Rear	15'	12'	15'

* As there are no building additions proposed for the front of the dwelling that would reduce the current front yard setback beyond existing, the provisions of Section 9.7.4 (setback averaging) were not evaluated. The project maintains the existing front yard setback (17 feet from face of dwelling).

General Plan and Zoning Conformance

The proposed rear yard deck extension for the single-family residence conforms to the land use designation for the site. The proposal is consistent with the low-density residential general plan designation.

The subject lot is below the minimum zoning standards of 6,000 square feet for the R-1B zoning district. The existing residence also has nonconforming side yard setbacks. However, adherence to Section 9.6.3(a) would allow a continuance of the existing setbacks.

As discussed earlier, the applicant proposes to reduce the rear yard setback from fifteen feet to twelve feet. The R-1B zoning district requires a minimum rear yard setback of fifteen feet. Thus, a variance is required.

Environmental Clearance (CEQA)

The proposed rear yard deck extension for the single family home is categorically exempt from the provisions of the California Environmental Quality Act by provision of Section 15301, Class 1 (e) (2)(a & b):

“Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if:

- (a) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and*
- (b) The area in which the project is located is not environmentally sensitive.*

The proposed deck extension will not increase the floor area for the dwelling and thus meet the above requirements for CEQA exemption.

Variance Analysis

The City Council must be able to make all required variance findings of Section 14.5.1(a-e) of the Zoning Ordinance to approve the requested variance. Below is a discussion of each finding and staff’s analysis in support of approval.

- (a) The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Plan.*

In assessing the subject variance request, this finding requires a determination of whether either a practical difficulty or unnecessary physical hardship will result through imposition of the setback requirement. In the abstract, it can be ascertained that there is no practical difficulty associated with existing outdoor space for the property. The property owner enjoys the use of two decks accessed from the dwelling as well as rear yard patio area, which provide outdoor recreational space for the property. Furthermore, the existence of this outdoor recreational space for the property mitigates against the argument that the property owner would face an unnecessary physical hardship by complying with the setback requirements.

The subject property size/dimensions do limit the opportunity for creation of additional usable open space due to the 15-foot setback requirement. This setback requirement has a distinct effect on downsloping properties (like the subject property) which use decks to create usable open space. Because the subject property is substandard in size (3,535 sq ft) and depth (71 ft.) in comparison to the standard sized/dimensioned property (greater than 6,000 sq. ft. or 100 foot depth) for the R-1B district, the setback requirement has a proportionately greater effect. It is for these reasons that staff believes that the strict or literal interpretation and enforcement of the setback requirements would result in practical difficulty or unnecessary physical hardship

inconsistent with the Zoning Plan. Thus, staff believes this finding can be made in the affirmative.

- (b) *There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.*

The R-1B district requires a minimum 15-foot rear yard setback, minimum lot size of 6,000 square feet, minimum width of 60 feet, and minimum depth of 100 feet. The subject property is one of four “bottleneck” properties located midblock on Oak Knoll Drive and the adjacent street Hillman Drive where the property dimensions taper in, both in width and depth, to create the smallest lots within this immediate neighborhood. The subject properties are thus considered substandard relative to their lot size (3,500 +/- sq. feet) and lot depth (70-71 ft). The subject lot has a 30% slope coupled with a narrow configuration (50 ft. width x 70 ft. depth) that makes it difficult to use for typical open space recreational opportunities.

A neighboring lot at 1816 Oak Knoll (the most similar in size and slope to the subject property) received variance approval to extend their decking four feet into the rear yard setback area, improving their open space opportunities. Other lots in the neighborhood, under identical zoning, have greater depth, thus allowing opportunities for constructing larger decks for the enjoyment of open space recreation while maintaining the rear yard setback. The subject property’s shallow depth is an exceptional and extraordinary circumstance that does not generally apply to other properties in the same zoning district. Staff believes this finding can be made in the affirmative.

- (c) *The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.*

The subject deck for 1814 Oak Knoll currently meets the R-1B (Single Family Residential) district required 15-foot rear yard setback. The proposed deck extension would project three feet into this required setback. Expected privileges to be enjoyed in conjunction with a single family dwelling would be the establishment and use of open space opportunities through creation of patio areas or open decking when steep lot slopes preclude the formation of flat ground level “backyard” areas.

As discussed earlier, the subject lot consists of moderately steep topography (30% cross slope) in conjunction with narrow property dimensions (50 ft. width x 71 ft. depth) that make it difficult to use for typical open recreational space. The lot at 1816 Oak Knoll, immediately adjacent to the subject property, is approximately the same size and slope as the subject property, and these two houses have mirror image floor plans. The property owners of 1816 Oak Knoll were granted a rear yard setback variance of four feet for a deck extension based in part on the argument for the provision of reasonable open recreational space. The similarities between these two properties warrant equal treatment such that the applicant should be permitted the same privilege of a rear

deck extension that is enjoyed by owners of the adjacent lot. Staff believes this finding can be made in the affirmative.

- (d) *The granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.*

The concept of “no grant of special privilege” exists to prohibit the granting of a variance for a property such that a right or privilege is given over and above other directly compared, and identically zoned properties. The neighboring property at 1816 Oak Knoll received Variance approval for a rear yard deck extension for a comparably sized, dimensioned, and sloped lot to the property at 1814 Oak Knoll (Eckert); thus staff believes approval of the subject variance will not be a grant of special privilege.

Both properties (1814 & 1816 Oak Knoll) were benefited with Floor Area Exception approvals to allow increases in the size of their respective dwellings. A floor area exception is similar to a variance in that it is an exception to the floor area standards, while a variance is an exception to other development standards (lot size, setback, height, etc.).

In the granting of the setback variance for 1816 Oak Knoll, there was not a determination that a “grant of special privilege” would result even given that a previous floor area exception had been approved for that property. Thus staff believes that it is challenging to argue that granting of a setback variance for 1814 Oak Knoll (Eckert) would be a grant of special privilege because these two properties are similar in size, shape, and topography. Moreover, if the “special privilege” factor was not an issue for one property, it should not be an issue for the other.

Although the amount of additional floor area granted via the Floor Area Exception process was greater for 1814 Oak Knoll (Eckert), staff does not believe this is a sufficient basis to conclude that a grant of special privilege will result from the requested setback variance. Thus, staff believes this finding can be made in the affirmative.

- (e) *The granting of the Variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.*

Within the past two years, the property directly downslope (1915 Hillman) of the subject site has been sold to new owners. The previous property owner raised issues of loss of light, privacy, and perceived loss of open space that would result if the subject variance were approved for 1814 Oak Knoll (Eckert). This information served as the key evidence for the Commission and Council to previously conclude that this finding could not be made in the affirmative due to adverse public health, safety or welfare effects that would be created with approval of the variance.

These new owners also supported the previous four-foot deck extension request (September 2003) and believed that a proposed variance for the deck extension would not adversely affect them relative to perceived loss of open space and light. Trees and tall landscaping installed by

the applicant at the rear yard property line will continue to provide a privacy buffer for this property. A condition of approval is required that the applicant submit structural calculations as part of a building permit to ensure that the construction is structurally sound. Staff believes this finding can be made in the affirmative.

Fiscal Impact

None.

Public Contact

1. The City Council is required to hold a public hearing for review of the subject Variance request. The City placed a public notice display ad in the local newspaper of general circulation (San Mateo Times) for a minimum 10-day period beginning on December 31, 2005, for the scheduled public hearing by the City Council on January 10, 2006. The City also mailed the appeal hearing public notice to all property owners within 300 feet of the subject site and other interested parties to inform such persons of the scheduled appeal hearing.
2. The applicant was also informed of the public hearing.

Conclusion/Recommendation

Based on the analysis and required findings, staff recommends that the City Council approve the requested Variance, subject to the attached conditions. A Resolution to this effect has also been prepared and is attached as part of this staff report; staff recommends the Council adopt the Resolution as presented.

Alternatives

1. Direct staff to prepare a resolution based on findings provided by the City Council to deny the Variance to allow a three foot deck extension into the required 15-foot rear yard for the single family dwelling at 1814 Oak Knoll Drive.
2. Continue the matter and direct staff to prepare an alternative course of action.

Attachments

- A. City Council Resolution Approving the Setback Variance
- B. Conditions of Approval
- C. Proposed Site/Deck Extension Plan

Respectfully submitted,

Carlos de Melo
Community Development Director

Jack Crist
Interim City Manager

Staff Contact:

Carlos de Melo, Community Development Director
(650) 595-7440
cdemelo@belmont.gov

RESOLUTION NO. _____

ATTACHMENT A

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
APPROVING A VARIANCE AT 1814 OAK KNOLL DRIVE (APPL. NO. 2001-0356)**

WHEREAS, Steven Eckert, property owner, has requested a Variance to allow a three foot deck extension into the required 15-foot rear yard for the single family dwelling at 1814 Oak Knoll Drive; and,

WHEREAS, a public hearing was duly noticed, held, and closed on January 10, 2006; and,

WHEREAS, the City Council of the City of Belmont finds the project to be categorically exempt pursuant to the California Environmental Quality Act, Section 15301, and,

WHEREAS, the City Council hereby adopts the staff report dated January 10, 2006 and the facts contained therein as its own findings of fact; and,

WHEREAS, the City Council did hear and use their independent judgment and considered all said reports, recommendations and testimony hereinabove set forth; and,

WHEREAS, the City Council finds the required variance findings of Section 14.5.1 (a-e) of the Zoning Ordinance can be made in the affirmative for the following reasons:

- a. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the Zoning Plan.*

In assessing the subject variance request, this finding requires a determination of whether either a practical difficulty or unnecessary physical hardship will result through imposition of the setback requirement. In the abstract, it can be ascertained that there is no practical difficulty associated with existing outdoor space for the property. The property owner enjoys the use of two decks accessed from the dwelling as well as rear yard patio area, which provide outdoor recreational space for the property. Furthermore, the existence of this outdoor recreational space for the property mitigates against the argument that the property owner would face an unnecessary physical hardship by complying with the setback requirements.

The subject property size/dimensions do limit the opportunity for creation of additional usable open space due to the 15-foot setback requirement. This setback requirement has a distinct effect on downsloping properties (like the subject property) which use decks to create usable open space. Because the subject property is substandard in size (3,535 sq ft) and depth (71 ft.) in comparison to the standard sized/dimensioned property (greater than 6,000 sq. ft. or 100 foot depth) for the R-1B district, the setback requirement has a proportionately greater effect. It is for these reasons that the City Council believes that the strict or literal interpretation and enforcement of the setback requirements would result in practical difficulty or unnecessary physical hardship inconsistent with the Zoning Plan. This finding is affirmed.

- b. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.*

The R-1B district requires a minimum 15-foot rear yard setback, minimum lot size of 6,000 square feet, minimum width of 60 feet, and minimum depth of 100 feet. The subject property is one of four “bottleneck” properties located midblock on Oak Knoll Drive and the adjacent street Hillman Drive where the property dimensions taper in, both in width and depth, to create the smallest lots within this immediate neighborhood. The subject properties are thus considered substandard relative to their lot size (3,500 +/- sq. feet) and lot depth (70-71 ft). The subject lot has a 30% slope coupled with a narrow configuration (50 ft. width x 70 ft. depth) that makes it difficult to use for typical open space recreational opportunities.

A neighboring lot at 1816 Oak Knoll (the most similar in size and slope to the subject property) received variance approval to extend their decking four feet into the rear yard setback area, improving their open space opportunities. Other lots in the neighborhood, under identical zoning, have greater depth, thus allowing opportunities for constructing larger decks for the enjoyment of open space recreation while maintaining the rear yard setback. The subject property’s shallow depth is an exceptional and extraordinary circumstance that does not generally apply to other properties in the same zoning district. This finding is affirmed.

- c. The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.*

The subject deck for 1814 Oak Knoll currently meets the R-1B (Single Family Residential) district required 15-foot rear yard setback. The proposed deck extension would project three feet into this required setback. Expected privileges to be enjoyed in conjunction with a single family dwelling would be the establishment and use of open space opportunities through creation of patio areas or open decking when steep lot slopes preclude the formation of flat ground level “backyard” areas.

The subject lot consists of moderately steep topography (30% cross slope) in conjunction with narrow property dimensions (50 ft. width x 71 ft. depth) that make it difficult to use for typical open recreational space. The lot at 1816 Oak Knoll, immediately adjacent to the subject property, is approximately the same size and slope as the subject property, and these two houses have mirror image floor plans. The property owners of 1816 Oak Knoll were granted a rear yard setback variance of four feet for a deck extension based in part on the argument for the provision of reasonable open recreational space. The similarities between these two properties warrant equal treatment such that the applicant should be permitted the same privilege of a rear deck extension that is enjoyed by owners of the adjacent lot. This finding is affirmed.

- d. The granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.*

The concept of “no grant of special privilege” exists to prohibit the granting of a variance for a property such that a right or privilege is given over and above other directly compared, and identically zoned properties. The neighboring property at 1816 Oak Knoll received Variance approval for a rear yard deck extension for a comparably sized, dimensioned, and sloped lot to the property at 1814 Oak Knoll (Eckert); thus the City Council believes approval of the subject variance will not be a grant of special privilege.

Both properties (1814 & 1816 Oak Knoll) were benefited with Floor Area Exception approvals to allow increases in the size of their respective dwellings. A floor area exception is similar to a variance in that it is an exception to the floor area standards, while a variance is an exception to other development standards (lot size, setback, height, etc.).

In the granting of the setback variance for 1816 Oak Knoll, there was not a determination that a “grant of special privilege” would result even given that a previous floor area exception had been approved for that property. Thus the City Council believes that it is challenging to argue that granting of a setback variance for 1814 Oak Knoll (Eckert) would be a grant of special privilege because these two properties are similar in size, shape, and topography. Moreover, if the “special privilege” factor was not an issue for one property, it should not be an issue for the other.

Although the amount of additional floor area granted via the Floor Area Exception process was greater for 1814 Oak Knoll (Eckert), the City Council does not believe this is a sufficient basis to conclude that a grant of special privilege will result from the requested setback variance. This finding is affirmed.

e. The granting of the Variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity.

Within the past two years, the property directly downslope (1915 Hillman) of the subject site has been sold to new owners. The previous property owner raised issues of loss of light, privacy, and perceived loss of open space that would result if the subject variance were approved for 1814 Oak Knoll (Eckert). This information served as the key evidence for the Commission and Council to previously conclude that this finding could not be made in the affirmative due to adverse public health, safety or welfare effects that would be created with approval of the variance.

These new owners also supported the previous four-foot deck extension request (September 2003) and believed that a proposed variance for the deck extension would not adversely affect them relative to perceived loss of open space and light. Trees and tall landscaping installed by the applicant at the rear yard property line will continue to provide a privacy buffer for this property. A condition of approval is required that the applicant submit structural calculations as part of a building permit to ensure that the construction is structurally sound. This finding is affirmed.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont hereby approves the Variance to allow construction of a three-foot deck extension into the required 15-foot rear yard at 1814 Oak Knoll Drive, based on the aforementioned findings, and subject to the Conditions of Approval of Exhibit “B”.

* * * * *

I hereby certify that the foregoing resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting held thereof held on January 10, 2006 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

RECUSED, COUNCILMEMBERS: _____

APPROVED:

CLERK of the City of Belmont

MAYOR of the City of Belmont

EXHIBIT “B”

CONDITIONS OF PROJECT APPROVAL
SETBACK VARIANCE
1814 OAK KNOLL DRIVE (APPL. NO.2001-0356)

I. COMPLY WITH THE FOLLOWING CONDITIONS OF THE COMMUNITY DEVELOPMENT DEPARTMENT:

- A. The following conditions shall be shown on plans submitted for a building permit and/or site development permit or otherwise met prior to issuance of the first building permit (i.e., foundation permit) and shall be completed and/or installed prior to occupancy and remain in place at all times that the use occupies the premises except as otherwise specified in the conditions:

I. Planning Division

1. Construction shall conform to the plans on file in the Planning Division for Appl. No. 2001-0356 and date-stamped January 5, 2006. The Director of Community Development may approve minor modifications to the plans.
2. All construction and related activities which require a City building permit shall be allowed only during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, and 10:00 a.m. to 5:00 p.m. on Saturdays. No construction activity or related activities shall be allowed outside of the aforementioned hours or on Sundays and the following holidays: New Year's Day, President's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day. All gasoline powered construction equipment shall be equipped with an operating muffler or baffling system as originally provided by the manufacturer, and no modification to these systems is permitted.
3. Prior to issuance of building permits, the property owner shall file with the Director of Community Development, on forms provided by the City, an acknowledgment that he/she has read, understands and agrees to these conditions of approval.
4. In accordance with the Belmont Zoning Ordinance, the permit(s) granted by this approval shall expire one (1) year from the date of approval, with said approval date indicated on the accompanying City Council resolution. Any request for extension of the expiration date shall be made in accordance with the applicable provisions of the Belmont Zoning Ordinance.
5. In the event that this approval is challenged by a third party, the property owner and all assignees will be responsible for defending against this challenge, and agrees to accept responsibility for defense at the request of the City. The property

owner and all assignees agree to defend, indemnify and hold harmless the City of Belmont and all officials, staff, consultants and agents from any costs, claims or liabilities arising from the approval, including without limitation, any award of attorneys fees that might result from the third party challenge.

6. The applicant shall abide by the terms and conditions of the Settlement Agreement to be drafted by the City Attorney's office consistent with the settlement placed on the record in court on 12-13-05.
7. No further Variances for deck extensions into any setback area shall be permitted in conjunction with the existing single family dwelling for this property.

Building Division

1. Prior to any construction, the applicant or a designated representative shall obtain all of the required building permits for the project.
- II. COMPLY WITH THE FOLLOWING CONDITIONS OF THE PUBLIC WORKS DEPARTMENT:
- A. The following conditions shall be met prior to the issuance of the first building permit (i.e., foundation permit) and/or site development permits except as otherwise specified in the conditions.
 1. The property owner/applicant shall apply for and obtain temporary encroachment permits from the Department of Public Works for work in the City public right-of-way, easements or property in which the City holds an interest, including driveway, sidewalk, sewer connections, sewer clean-outs, curb drains, storm drain connections, placement of a debris box.
 - B. The following conditions shall be met prior to issuance of occupancy permits except as otherwise specified in the conditions.
 1. Failure to comply with any permit condition may result in a "Stop Work" order or other penalty.
 2. Streets, sidewalks and curbs in need of repair within and bordering the project shall be repaired and/or removed and replaced in accordance with the Department of Public Works approved standards. Photographs or video of before condition are recommended.
 3. Grading shall be performed in accordance with the City Grading Ordinance, Chapter 9 of the City Code. Soil or other construction materials shall not be stockpiled in the public right-of-way unless an encroachment permit is obtained from the Department of Public Works. Grading shall neither be initiated nor continued between November 15 and April 15. Grading shall be done between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday unless otherwise specifically authorized by the Director of Public Works. The

Stormwater Pollution Prevention Program Best Management Practices (BMPs) for construction shall be implemented to protect water quality.

4. The owner/applicant shall ensure that applicable Best Management Practices (BMPs) from the San Mateo Stormwater Pollution Prevention Program (STOPPP) are followed to prevent discharge of soil or any construction material into the gutter, stormdrain system or creek.

III. COMPLY WITH THE FOLLOWING CONDITIONS OF THE POLICE DEPARTMENT:

1. All activities shall be subject to the requirements of the Belmont Noise Ordinance
2. No debris boxes or building materials shall be stored on the street.
3. Flag persons shall be positioned at both ends of blocked traffic lanes.
4. 24-hour written notice to the Police Department is required before any lane closure.

Certification of Approved Final Conditions:

Carlos de Melo, Community Development Director

Date

PLEASE NOTE:

Attachment C is not included as part of this document - please contact the City Clerk's Office at (650) 595-7413 for further information on this attachment.